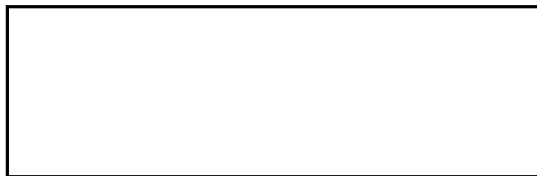



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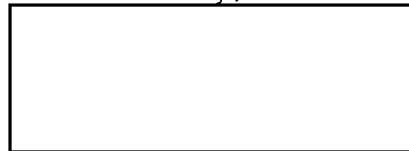
Dear Al:

Thank you very much for sending in the Bill Leary article. I agree with you it is a very workmanlike job and contributes to the history of that era. I am enclosing your inscribed copy. I was aware at the time that  felt pretty strongly about the situation, but this is the first time I have seen his own words quoted.

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I will probably see Dick shortly and will pass on to him your feelings.

Sincerely,



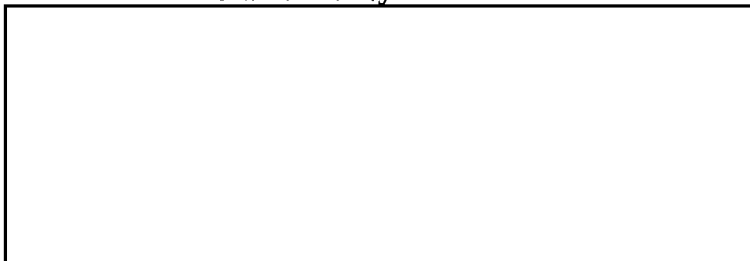
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AIRCRAFT AND ANTI-COMMUNISTS:
CAT IN ACTION, 1949-52

By
WILLIAM M. LEARY, JR.

Reprinted from
THE CHINA QUARTERLY, October-December 1972
24 FITZROY SQUARE, LONDON, W.1

PRINTED IN GREAT BRITAIN
BY
THE EASTERN PRESS LTD.
OF LONDON AND READING

Aircraft and Anti-Communists: CAT in Action, 1949-52

William M. Leary, Jr.

"The United States Government," President Harry S. Truman announced on 5 January 1950, "will not pursue a course which will lead to involvement in the civil conflict in China."¹ Historians generally agree that President Truman meant what he said. American policy after the summer of 1949, writes Tang Tsou, was "to avoid, as far as possible, any further involvement in the Chinese civil war and to allow events in China to unfold themselves."² The Truman administration ruled out the use of force to prevent the fall of Formosa; non-recognition of the Communist government was adopted as "a temporary measure," due to Republican pressure and the hope of gaining concessions from Peking.³ The outbreak of the Korean War in June 1950, observes Lyman P. Van Slyke, "brought to a sudden end the policy that the administration had followed for two years, and committed us once again to involvement in the Chinese civil war." The United States assumed a protective role towards the remnants of the Nationalists on Formosa and became the implacable foe of Peking.⁴ This article, a study of a commercial airline's participation in a major diplomatic and legal controversy during the last phase of the Chinese civil war, will suggest that there is reason to doubt, or at least to modify, the traditional interpretation of American policy towards China between late 1949 and June 1950.

Civil Air Transport (CAT), an airline founded in China in 1946 by Claire L. Chennault and Whiting Willauer as a private commercial venture, had become deeply involved in the Chinese civil war by 1948 and often served as an adjunct to the Nationalist air force.⁵ In late September 1949, as the Communist armies swept southward, Thomas G.

1. *New York Times*, 6 January 1950.

2. Tang Tsou, *America's Failure in China, 1941-50* (Chicago, 1963), p. 519.

3. See *ibid.* pp. 494-551; Richard W. Leopold, *The Growth of American Foreign Policy* (New York, 1962), pp. 672-5 and John W. Spanier, *American Foreign Policy Since World War II* (rev. ed., New York, 1968), p. 89. Walter La Feber suggests that a tougher view of events in China emerged in Washington following a raid on the American consulate grounds in Peking in mid-January 1950 and the publication of the Sino-Soviet treaty in February. La Feber, however, does not produce evidence that any action accompanied the changing point of view. *America, Russia, and the Cold War, 1945-1966* (New York, 1967), pp. 83-90.

4. Introduction to *The China White Paper* (Stanford, 1967).

5. See my "Portrait of a cold war warrior: Whiting Willauer and Civil Air Transport," *Modern Asian Studies*, No. 5 (1971), pp. 373-88.

Corcoran, one of the airline's backers and a man with considerable political influence in Washington, informed Willauer that American policy towards China was uncertain. "You told me," Willauer wrote to Corcoran a few months later, "that you thought my basic function was to use my knowledge of the Far East and the available facilities of CAT to back up the final resistance efforts of the Chinese Government on the mainland; and that if these efforts were not successful, to do everything in my power as a private businessman with the facilities of CAT under my control to arrange resistance by the Chinese on Hainan and Formosa." The main purpose of these activities, Willauer continued, was to afford "a breathing spell to the United States in determining their ultimate policy as respects China and the Far East in general."⁶

Chennault and Willauer, believing that a Communist victory would be adverse to the interests of the United States and Chinese people, sought to encourage resistance by the Nationalists. Among other things, they were active in evacuating Nationalist personnel to Formosa. Willauer estimated that CAT probably saved 100,000 people from capture by the Communists, people who were to provide the backbone for the resistance movement on Formosa.⁷ Their programme, however, was endangered by dramatic developments in Hong Kong.

By the autumn of 1949, China's two major airlines, the China National Aviation Corporation (CNAC) and the Central Air Transport Corporation (CATC), were based in Hong Kong, operating sporadic services to areas on the mainland that had not fallen to the advancing Communists.⁸ Rumours had been circulating for some time about discontent among the employees of the two airlines, many of whom feared for the safety of their relatives on the mainland should the Nationalist government attempt to relocate the companies on Formosa. Nevertheless, it still came as a shock when the general managers of both airlines defected to Peking with 12 aircraft on 9 November 1949. Seventy-one aircraft remained on the ground in Hong Kong, and were claimed as the "sacred property" of the Chinese People's Republic.⁹

The defection of elements of CNAC and CATC, and the possibility that the Communists might also gain control of the remaining aircraft, posed a real threat to the final resistance by the Nationalists, as Chen-

6. Willauer to Corcoran, 6 January 1950, the Papers of Whiting Willauer, Firestone Library, Princeton University.

7. Willauer taped memoir, 1 December 1960, Willauer Papers.

8. The Chinese Government owned 80 per cent. of the stock in CNAC, with the balance held by Pan American Airways, Civil Aeronautics Board, Foreign Transport division. *China National Aviation Corporation* (Washington, 1946). CATC was owned entirely by the government and administered by a board of governors under the control and direction of the Ministry of Communications. "In the Privy Council, on Appeal from the Appeal Court of Hong Kong, between Civil Air Transport Incorporated and Central Air Transport Corporation," n.d. [1952], copy in the Willauer Papers.

9. *Hong Kong Standard*, 10 November 1949; *South China Morning Post*, 12 November 1949.

nault and Willauer had intelligence information that the Communists were training paratroops for an assault on Formosa. "We felt," Willauer later recalled, "that if [the Communists] got those transport planes [in Hong Kong] and put them together with the Red paratroops, considering the chaos which existed on Formosa at that time, it would have been a pushover for the Reds to have taken Formosa."¹⁰

On 10 November, the day following the defection of the airline personnel, Willauer flew from Hong Kong to Taipei to consult with Nationalist officials. Conversations with General Chow, commander of the Nationalist air force, and other officials revealed that everyone was "very much distressed" about the situation but that no one had any idea what to do about it.¹¹ Since a meeting was scheduled with Chiang Kai-shek at 8:30 the next morning, Willauer realized that he would have to formulate a plan of action quickly.¹²

Willauer's proposal, embodied in a memorandum handed to the Generalissimo at their meeting, began by stressing the gravity of the circumstances. Not only did the defection place Formosa in danger from invasion, but it also represented a severe political defeat which could have a fatal effect on Nationalist morale. "Already many people have been constantly worrying about how they can escape if the Communists win," the memorandum read. "Until the defection of the airlines all these people felt sure they could get out by air. As long as they had this feeling of *ultimate security* they were willing to stay at their jobs and fight to the end. Now this means of escape by air seems cut off. Unless something can be done at once, panic may spread throughout China, Taiwan and Hainan."¹³

Willauer went on to offer the services of CAT in an effort to prevent the aircraft still remaining in Hong Kong from falling to the Communists. CAT would act as the agent for the Nationalist government, with full authority to change the title of the aircraft, or take any other action necessary to deny the aircraft to the Communists and, hopefully, deliver them to Formosa. Chiang consented to this arrangement. He made available to Willauer teletype equipment and codes for speedy communications with Taipei, a high ranking air force officer for liaison duties, and an official from the Ministry of Finance, who would attempt to freeze the bank accounts of CNAC and CATC in Hong Kong and supply the necessary funds for the "neutralization programme."¹⁴

Upon his return to Hong Kong, Willauer lost no time in putting this programme into effect. On 13 November the Nationalist Civil Aeronautics

10. Willauer taped memoir, 1 December 1960, Willauer Papers.

11. Chow, Willauer noted, appeared less concerned over the danger to Formosa than over the possibility that he might be held personally responsible for the defection of the two general managers, both of whom were formerly high ranking air force officers. Willauer to Corcoran, 27 December 1949, Willauer Papers.

12. *Ibid.*

13. Willauer memorandum, "Informal notes for talk with H.E. The Generalissimo," 11 November 1949, Willauer Papers.

14. *Ibid.* Willauer to Corcoran, 27 December 1949, Willauer Papers.

Administration suspended the registration certificates of the aircraft. Three days later, "disloyal" employees of the two airlines were dismissed, and William R. Parker, CAT's security chief, was placed in charge of a squad of 20 Sikh guards, assigned to prevent removal of the planes. Willauer personally led a group of CAT pilots and crew chiefs in a midnight foray to the airport, where they immobilized the aircraft, at least temporarily, by letting all the air out of the tyres. Willauer also spread rumours that trucks would be driven across the path of any aircraft that attempted to take off.¹⁵ "New things crop up every day," Mrs Willauer wrote to her daughter, "which make life like an adventure novel."¹⁶

Obviously, the attitude of the British authorities in Hong Kong would be crucial in determining final possession of the disputed aircraft. Sir Alexander Grantham, governor of the Colony, stated on 17 November that no aircraft would be permitted to depart for the mainland until the Sino-British air agreement had been clarified. At the same time, he ordered CAT's security guards to be removed to avoid trouble with Communist sympathizers.¹⁷ No sooner had the guards left than a group of CNAC/CATC employees, who had declared their allegiance to Peking, took physical possession of the aircraft and stated that they intended to stay until the British Government recognized the Communist regime. This was expected to take place by the end of the year, at which time the assets of the two airlines would become the property of the People's Republic.¹⁸ Willauer's agents, in turn, obtained an injunction from Sir Leslie Gibson, chief justice of Hong Kong, to restrain the defectors from remaining on the premises and from removing or tampering with the property.¹⁹ When the defectors ignored the injunction, the civil authorities declined to enforce it, fearing a riot that would endanger the security of the Colony.²⁰

The actions of the Hong Kong Government made it clear to Chennault and Willauer that their plan to act as agents for the Nationalists had failed. Aware that the only remaining alternative to prevent the Communists from obtaining the aircraft was to transfer the equipment to American ownership, they contacted Corcoran and his associates in Washington for authorization to undertake the operation. This proposal raised the question of American policy towards China, because "it was recognized from the beginning that this enterprise would never succeed

15. "I don't know whether we would have ever done this," Willauer later commented, "because we could have gone to jail for it, but the rumors which we managed to spread through the bar-rooms and other places where the Chinese pilots [of CNAC and CATC] hung out was sufficient to scare them off." Willauer taped memoir, 1 December 1960, Willauer Papers.

16. Louise Willauer to Sally Willauer, 16 November 1949, the Papers of Louise Russell Willauer, in the possession of Mrs Willauer, Nantucket, Massachusetts.

17. *The Times* (London) 18 November 1949.

18. *Ibid.* 25 November 1949.

19. *Ibid.*

20. Willauer notes, n.d. [c. 1961], Willauer Papers.

unless it could receive openly the strongest co-operation and support from the U.S. Government and diplomatic officials in Washington, London and Hong Kong."²¹

Despite the outwardly passive attitude of the United States towards the civil war in China, Corcoran apparently had no difficulty in mobilizing official support for the project. Responsible officials in Washington, one CAT official later wrote, confirmed that it was in the "national interest" to do everything possible to keep the aircraft from the Communists. To accomplish this, "the required official support was wholeheartedly offered (it was indeed asked for and *promised as a necessary condition* of the operation being undertaken at all). . . ." ²²

Officials in Washington advised Corcoran that governmental assistance could be made effective and given openly only to what appeared to be an American citizen or corporation. The result of this stipulation was the establishment of a complicated corporate structure. At the top stood C.A.T., S.A., incorporated under liberal Panamanian laws that afforded benefits with respect to taxes, secrecy, and so forth. Civil Air Transport, Inc. (CATI) was then incorporated under Delaware laws to act as C.A.T., S.A.'s nominee in the legal battles to follow. Because ownership of the disputed aircraft must appear to be American, the relationship between C.A.T., S.A. and CATI was kept secret.²³

Although the primary purpose of the operation was to deny the aircraft in Hong Kong to the Communists, the corporate documents made provision for the possibility of recovering the assets of the two airlines; e.g., their aircraft, frozen bank balances, and property in Hong Kong. Expenses incurred during the operation would have first claim on any assets recovered. The remainder, if any, would be divided equally among the stockholders of C.A.T., S.A.: Chennault, Willauer, Corcoran, David M. Corcoran, William S. Youngman, and James J. Brennan.²⁴ In the unlikely event of the aircraft being recovered quickly, there was a tentative plan to combine them with CAT's fleet and operate a 100-plane airline in the Far East for the account of "Oregon" (the Central Intelligence Agency?).²⁵

21. Unsigned memorandum, "Background statement to Rio Cathay, S.A., C.A.T., S.A. and Civil Air Transport, Inc. (Del.) Corporate Papers," 15 July 1953, Willauer Papers. This memorandum was probably written by Willauer.

22. "Background statement," 15 July 1953, Willauer Papers.

23. Several other companies were established from time to time for various purposes, which added to the (intentional) confusion. CATI was separate and distinct from CAT although many of the same individuals were involved in both companies. The complicated corporate structure was later to cause trouble with the Nationalist government. "Background statement," 15 July 1953; Civil Air Transport Organizational Memorandum Number One, "The corporate structure and relationship of Chennault and Willauer doing business as Civil Air Transport, C.A.T. Inc., Civil Air Transport, Inc. and CAT Incorporated," 1 December 1950; both in Willauer Papers.

24. "Background statement," 15 July 1953, Willauer Papers.

25. Willauer notes, n.d. [c. 1961]; Corcoran to Willauer, 18 December 1949; both in Willauer Papers. The 100-plane project fell through. CAT, however,

Armed with the necessary authorization from Corcoran, in early December 1949, Chennault and Willauer began negotiations with the Nationalist government for the purchase of CNAC and CATC. The Chinese officials, to Willauer's great chagrin, insisted on a purchase price (on paper) equal to the fair market value of the assets of the two companies. While it was improbable that the Nationalists would ever recover a penny of their investment without the assistance of Chennault and Willauer, the negotiators feared that they would be placed in a bad light should any assets be recovered. As a result, Willauer, on behalf of Chennault and himself, ended up signing personal promissory notes for \$4,750,000.²⁶ Although this was later made the obligation of a corporation, at the time, Willauer recalled, "that was a pretty scary time for me because I didn't have \$4,750,000."²⁷ The Nationalist government approved the sale in mid-December. Within 24 hours, the United States Civil Aeronautics Administration, upon receipt of a letter from the State Department certifying that the purchase was in the national interest, waived airworthiness requirements and granted the aircraft American registration.²⁸ Chennault and Willauer announced the purchase on 18 December and called upon the Hong Kong government to ensure the safety of this "privately owned American property."²⁹

The question of ownership was now to be decided in the courts. CAT's attorneys - William Donovan, wartime chief of the Office of Strategic Services and Richard Heppner, former head of the OSS in China - arrived in Hong Kong early in January 1950.³⁰ Donovan called on Sir Alexander Grantham on 4 January. Donovan, Grantham recalled, "insisted that the planes be handed over to him without further ado, for, he said, if it had not been for the United States, Britain would have lost the war. Moreover, he added, if I did not do as he demanded he would make it hot for me with the authorities in London."³¹ The governor not only refused to issue an executive order to deliver the aircraft to their

became closely associated with a number of governmental agencies, including the Central Intelligence Agency, during the 1950s and, in the words of Edward Lansdale, "demonstrated its capability on numerous occasions to meet all types of contingency or long-term covert air requirements in support of U.S. objectives." CAT's pilots flew supplies into Dienbienphu in 1954, provided logistical and tactical air support during the civil war in Indonesia, conducted missions into Laos, and made numerous overflights of mainland China. See Edward G. Lansdale to Maxwell D. Taylor, "Resources for unconventional warfare in S.E. Asia," n.d. [c. July 1961], reprinted in *The Pentagon Papers* (New York, 1971), pp. 130-8. The Willauer Papers contain no direct information bearing on CAT's relationship with the CIA.

26. This included \$1,250,000 advanced by the Bank of Taiwan in payment to Pan American Airways for its 20 per cent. share of CNAC. "Background statement," 15 July 1953, Willauer Papers.

27. Willauer taped memoir, 1 December 1960, Willauer Papers.

28. *Ibid.* Willauer memorandum, "Working paper - CAT - 15 March to 15 June," 9 April 1950, Willauer Papers.

29. *The Times* (London) 29 December 1949.

30. *New York Times*, 3 January 1950.

31. Alexander Grantham, *Via Ports* (Hong Kong, 1965), p. 162.

new owners, but he also denied access to the aircraft to two American inspectors from the Civil Aeronautics Administration.³² The following day, at midnight, Great Britain formally recognized the Communist government.

Inevitably, the Hong Kong authorities were subject to intense pressure from all sides as the courts deliberated on the various claims to the aircraft. The United States Government, through its consul general in Hong Kong, Karl L. Rankin, demanded that American property be protected. The Communists, on the other hand, threatened to seize a British-owned godown in Shanghai for every aircraft denied to them.³³ Under the circumstances, the court's decision was never really in doubt. Officials in the Colony were not prepared to offend the new government in Peking and possibly endanger the safety of Hong Kong. On 23 February a local court dismissed CATI's application for appointment of a receiver, voided all injunctions, and ruled that the aircraft were the rightful property of the People's Republic under the principle of sovereign immunity.³⁴

Reaction in Washington to this decision was immediate and sharp. Secretary of State Dean Acheson told a press conference on 24 February that the United States had "vigorously protested" to authorities in Hong Kong and London.³⁵ In a speech to the Senate, Senator William F. Knowland, an influential Republican from California, termed the release of the aircraft to Peking "one of the greatest blows to the non-Communist world that has been delivered in that part of the world." The United States, Knowland concluded, should make it clear to London that "the British can no longer expect assistance from us to help to stop communism in Europe while the British Government, by their recognition of the Communist regime [in China], and by this latest action of turning over 71 planes, actually accelerate the spread of communism in Asia."³⁶

Whitehall remained unmoved. A spokesman for the Foreign Office noted on 27 February that the British Government could not and would not interfere in the decisions of the Hong Kong courts.³⁷ Two weeks later, the first shipment of 1,000 tons of spare parts left Hong Kong for the mainland. At the same time, there were reports that the Chinese had commandeered 2,000 residences near Hungjao airport, Shanghai, for Russian military advisers who had begun to arrive.³⁸ The concern of the Nationalist government over the fate of the aircraft was made clear on the

32. *New York Times*, 5 January 1950.

33. *Washington Daily News*, 24 February 1950. For an American view of the diplomatic atmosphere at the time, see Karl Lott Rankin, *China Assignment* (Seattle, 1964).

34. *The Times* (London) 25 February 1950; "In the Privy Council," n.d. [1952], Willauer Papers.

35. *New York Times*, 25 February 1950.

36. *Congressional Record*, 81st Congress, 2nd Session (24 February 1950), p. 233.

37. *New York Times*, 28 February 1950.

38. *Ibid.* 15 March 1950.

morning of 2 April when Nationalist agents planted time bombs which damaged seven aircraft.³⁹

Meanwhile, American pressure on the British Government continued unabated. Senator Knowland led the opposition in Congress and threatened to fight against appropriations for British assistance programmes.⁴⁰ Corcoran, according to Willauer, performed "miracles" in mobilizing governmental support; there is an unconfirmed report that President Truman sent a letter to Prime Minister Clement Attlee on the matter.⁴¹

Peking was no less active. Chou En-lai broadcast a statement on 4 April charging that the British had been impeding the departure of the aircraft and had failed to protect them adequately. The Hong Kong authorities, Chou said, would be held "fully and directly responsible" for any damage to Chinese property.⁴² Later, the Chinese Government indicated that a favourable settlement of this matter was a pre-requisite to the establishment of full diplomatic relations.⁴³

Just as the decision of the Hong Kong authorities was predictable, the action of the British Government in London was a foregone conclusion. Apparently the British had been told in the strongest possible language that failure to act in this matter could have an adverse effect upon future American economic assistance. On 10 May, 1950, the British issued an Order-in-Council which instructed the Hong Kong Government to retain possession of the disputed aircraft until the question of ownership had been decided "by full processes of the law."⁴⁴ This insured a lengthy period of litigation in the Hong Kong courts with final right of appeal to the Privy Council in London.

Sir Alexander Grantham, for one, was not happy with this turn of events. The Order-in-Council, he later wrote, "overrode the law as it stood and in effect made a new law, which would inevitably pass the planes to the Americans."⁴⁵ Nevertheless, Grantham had no choice but to comply. Within hours of the issuance of the order, police in Hong Kong halted dismantling of the aircraft and seized 50 crates of parts, already loaded on board a ship in the harbour, bound for Tsingtao.⁴⁶ "Who was I," Grantham wrote, "a mere governor of a colonial dependency, to complain, and what good would it have done if I had? Nonetheless I felt unhappy: altogether a sorry business."⁴⁷

Peking protested vehemently. Chang Han-fu, vice-minister for Foreign

39. *Ibid.* 2 April 1950. The Nationalists' responsibility for this incident, which was officially denied, is detailed in Willauer memorandum, "CAT equitable claims against the Chinese government," 31 January 1953, Willauer Papers.

40. *Congressional Record*, 81st Congress, 2nd Session (28 March 1950), pp. 223-4.

41. Willauer taped memoir, 1 December 1960; J. K. Twanmoh memorandum, "CATI problems," 8 September 1951; both in Willauer Papers.

42. *New York Times*, 4 April 1950.

43. *Ibid.* 11 May 1950.

44. *Ibid.* "In the Privy Council," n.d. [1952], Willauer Papers.

45. Grantham, *Via Ports*, p. 163.

46. *New York Times*, 13 May 1950.

47. Grantham, *Via Ports*, p. 163.

Affairs, handed the British chargé a note expressing the intense displeasure of his government. Terming the Order-in-Council "a demonstration of a most unfriendly attitude towards the Chinese People's Republic," Chang warned that unless the Order was rescinded, Peking would have cause to doubt London's desire to establish diplomatic relations.⁴⁸

At home, Britain's Labour government was faced with a full debate in Parliament on Asian policy. Ernest Bevin, the Secretary of State for Foreign Affairs, defended the government's decision to recognize the new Chinese Government, but at the same time he complained about the irritating tactics of Peking. The Chinese, he said on 24 May, seemed to enjoy keeping the British waiting like a suitor on the doorstep.

What is happening at the moment is that the Chinese are attempting to raise side issues which may be annoying and irritating to a country of this character. To that we have no intention of submitting. First of all questions have been raised about some aeroplanes whose ownership is in legal dispute. I decline to discuss that in the context of the establishment of diplomatic relations. What has happened is that these planes, so it is alleged, were sold to Americans by people who were connected with the Nationalist Government. It is not for a Foreign Secretary of this country to determine whether these planes have been sold legally. I will not undertake such a task. Neither will I step in and say, "I will do this, that or the other thing as the price of getting your agreement to the establishment of diplomatic relations." I cannot do that. What we have done is to make arrangements for the process of law to be carried out properly, and we stand or fall by whatever are the decisions of the courts. But this is a separate and distinct thing altogether from the establishment of diplomatic relations. My message to the Chinese Government is that I would not imitate these bad practices from elsewhere.⁴⁹

Corcoran, Chennault, Willauer and associates had scored a major victory but the battle for the aircraft was far from over. The attitude of the Hong Kong courts remained unchanged, and this even after Great Britain became involved in the Korean War, and CATI experienced a series of adverse rulings throughout the remainder of 1950.⁵⁰ The matter finally reached the Supreme Court of Hong Kong on appeal in late March 1951. Sir Walter Monckton, leading counsel for CATI in this action, argued that the assets in dispute had been the rightful property of the Chinese Government in December 1949, that the Nationalists were recognised by Great Britain as the *de jure* government of China at that time, and that the sale to CATI was a valid transaction. The subsequent change of recognition, he concluded, did not divest CATI of property legitimately acquired. Chief Justice Sir Gerald Howe did not agree. He ruled on 21 May that the purchase by CATI had not been made in good faith and was merely a "device" to keep the aircraft out

48. *New York Times*, 20 May 1950; *The Times* (London), 22 May 1950.

49. *Parliamentary Debates (Hansard)*, House of Commons, Official Report, Session 1950, Fifth series, Vol. 475 (London, 1950), p. 2083. See also *The Times* (London), 25 May 1950.

50. "In the Privy Council," n.d. [1952], Willauer Papers.

of the hands of the Communists. Furthermore, the subsequent recognition of the People's government of China had the retroactive effect of conferring ownership of all assets of the government to the new regime as of 1 October, 1949.⁵¹

The British Government, the *New York Times* reported, was "obviously embarrassed and divided" over the decision by the chief justice. A great debate about Far Eastern policy was underway in the United States following the recall of General MacArthur, and charges of British appeasement of communism were being heard in Congress. The decision on the aircraft would only exacerbate the situation. Unofficially, the *Times* continued, British authorities agreed "that the planes should not be transferred to the Chinese Communists for many months, if ever." London hoped that CATI would exercise its right of appeal to the Privy Council. "In this way," the *Times* concluded, "government circles see the only hope of steering between the Scylla of increased United States resentment and the Charybdis of Chinese Communist anger."⁵²

The British need not have had any fear in this regard, as CATI fully intended to exercise its right of appeal. Realizing that the decision of the Privy Council would probably be made on grounds of politics as much as law, CATI sought to maintain pressure on American authorities who would, in turn, make continued representations in London. Corcoran, among other things, launched the "Chennault Project." This involved letters to Congressmen and other influential individuals, over Chennault's signature, keeping them informed about developments and reminding them about the vital American interest at stake.⁵³ Most replies consisted of a perfunctory acknowledgement, although several individuals responded at some length. Senator Joseph R. McCarthy, for example, pledged his support, but he was not optimistic about the outcome "while we have a State Department whose every action would appear to be dictated by the left-wing Attlee government of Britain."⁵⁴ Representative Alfred D. Sieminski of New Jersey wrote: "Keep punching - For Freedom under God."⁵⁵ Senator Lyndon B. Johnson advised that he had contacted the State Department on the matter, as did Frank C. Hilton, commander-in-chief of the Veterans of Foreign Wars.⁵⁶ The national commander of the American Legion, Donald R. Wilson, reported that he had spoken to several congressmen, and asked for additional material for speeches.⁵⁷

Corcoran and Donovan went to London in the late spring of 1952 in an effort to persuade the British authorities to hear the case during

51. *Ibid.*

52. *New York Times*, 31 May 1951.

53. There is a folder full of this material in the Papers of Claire L. Chennault, Hoover Institution, Stanford University.

54. McCarthy to Chennault, 26 May 1951, Chennault Papers.

55. Sieminski to Chennault, 5 June 1951, Chennault Papers.

56. Johnson to Chennault, 8 June 1951; Hilton to Chennault, 6 March 1951; both in Chennault Papers.

57. Wilson to Chennault, 17 March 1952, Chennault Papers.

the current session of the Privy Council. They were anxious for an immediate hearing, Chennault wrote, because of the "constant risk of changes in political attitudes in the Far East situation according to the fortunes of the Korean war and the U.S. presidential election." Equally important was the decreasing value of the equipment in Hong Kong due to deterioration and sabotage. Also, an end to the Korean War would undoubtedly depress the market for used aircraft.⁵⁸ The British agreed to schedule the case for hearing in 1952 if certain conditions were met. First, if the decision of the Privy Council went in favour of CATI, the aircraft would not go to Formosa under any circumstances; and, second, the aircraft would have to be removed from Hong Kong prior to 1 October 1952, Peking's National Day. Corcoran consented.⁵⁹

Sir Hartley Shawcross, former attorney-general in the recently defeated Labour government, appeared for CATI before the Judicial Committee of the Privy Council on 11 June 1952, and obtained permission for an immediate hearing of the appeal from the Hong Kong decision.⁶⁰ Shawcross took the case before the Council the following month, arguing in the same terms that had been used by Monckton in Hong Kong.⁶¹ On 28 July, the Privy Council allowed the appeal.⁶² The Hong Kong police raided the airport on the morning of 29 July, seized the aircraft, and removed the Communist guards in police wagons.⁶³

CATI now had to comply with the terms of its agreement with the British authorities. This was to prove a difficult task. The aircraft had deteriorated after being exposed to salt air for nearly two years, and they could not be made airworthy and flown out in time to meet the deadline of 1 October. They would have to be dismantled and shipped, which meant that special docks had to be built adjacent to the airport; it would be necessary to hire ships, barges, and cranes and arrangements had to be made for crating. Local contractors, fearful of attacks by Communist sympathizers, insisted on exorbitant insurance requirements before they would undertake the work, and CATI had to absolve the Hong Kong government from all liabilities during the move.⁶⁴

This was only part of the problem. The smaller aircraft could be dismantled, crated, and removed by cargo ship, but the larger aircraft could not be handled in this manner. Corcoran and associates, to resolve this difficulty, engaged in "intensive political activity" for the use of

58. Chennault memorandum, "Notes on conversation with T.G.C. [Corcoran] in New Orleans," 14 October 1952, Willauer Papers.

59. *Ibid.* Chennault and Willauer memorandum for Chiang Kai-shek, "A report on the CATC and CNAC legal cases," 9 November 1952, Willauer Papers.

60. *The Times* (London), 11 June 1952.

61. *Ibid.* 22 July 1950.

62. *Ibid.* 29 July 1952. The decision pertained only to the assets of CATC. The Hong Kong courts later applied the judgment to CNAC property.

63. *New York Times*, 29 July 1952; *The Bulletin* (Tokyo: Public Relations Department of Civil Air Transport), Vol. 5, No. 9 (September 1952), pp. 1-2.

64. Chennault and Willauer memorandum, "A report on the CATC and CNAC legal cases," 9 November 1952, Willauer Papers.

an American aircraft carrier.⁶⁵ Chennault wrote to Senators John Sparkman, Richard Russell, and Lyndon Johnson and asked them to use their influence with the administration. The aircraft, Chennault said, were in constant danger from sabotage; the British Government had no objections to the employment of an American warship to remove the planes.⁶⁶ Eventually, final approval for this unprecedented use of an American naval vessel was obtained from President Truman.⁶⁷

On 28 September 1952, the light escort carrier U.S.S. *Cape Espérance* arrived in Hong Kong to load aircraft for CATI on a "reimbursable basis."⁶⁸ *Cape Espérance* sailed two days later in company with the Pacific Far East Lines freighter *Flying Dragon*, and arrived in Long Beach on 19 October. Chennault disembarked from *Cape Espérance*, met reporters, and hailed "the first defeat the Communists had suffered in the Far East."⁶⁹

There remained only to tidy up the loose ends of the affair. The legal questions raised by the activities of Chennault and Willauer were finally resolved to the satisfaction of all parties, except the Chinese Communists, when Viscount Simon on 13 October 1952 explained the legal basis for the decision of the Privy Council.

The Hong Kong courts, in ruling against Chennault and Willauer, had held that the purchase agreement was invalid because the Nationalist government had not acted in good faith and because the subsequent recognition of the Communist government by Great Britain retroactively conferred ownership of all assets as of 1 October 1949.

With regard to the former point, Sir Gerald Howe had written:

By normal diplomatic usage . . . the then Nationalist government must have been fully alive to the probability of the withdrawal of recognition by His Majesty's government in the near future and in fact this took place as from midnight 5/6 January 1950, and it is evident that this transaction was a device entered into with full knowledge by both parties, by which it was hoped that the aircraft might be prevented from passing to the Central People's Government on its recognition *de jure*. . . . It is a transaction

65. *Ibid.*

66. With respect to the legal problems, Chennault wrote: "The technicality that they [the aircraft] are unavoidably private American property on a Navy ship can be faced *after* they are gotten off. An overriding public interest in the preclusive denial of their physical possession to the Chinese Communists (which has been effected) has been succeeded by an overriding public interest in precluding our western loss of face (and of irreplaceable effective material) if we are not able to remove them before Communist sabotage destroys them. In the Far East the hesitant groups who are watching to jump to the strongest people who can protect their own will not distinguish between public and private property in war material." Chennault to Sparkman, Russell, and Johnson, 1 August 1952, Chennault Papers.

67. Chennault and Willauer memorandum, "A report on the CATC and CNAC legal cases," 9 November 1952, Willauer Papers.

68. *New York Times*, 29 September 1952.

69. *Ibid.*, 20 October 1952.

inimical to the Central People's Government and indeed, as the aircraft were used for a public purpose within and without China, inimical to the interests of the Chinese people. . . . In the transaction now before this court, I have no hesitation in reaching the conclusion that not only was it one designed to embarrass the Central People's Government, but it was against the interests of the Chinese people and that it was a transaction incompatible with that trusteeship which every government must assume. . . .⁷⁰

Viscount Simon disagreed with this line of reasoning. Awareness by the Nationalist government of impending withdrawal of recognition was "at best, a matter of speculation." Furthermore, Simon continued: "British courts cannot take it upon themselves to pronounce whether a foreign government, recognized by Her Majesty's government, is acting contrary to the interests of its people. The right in municipal law to follow property which is subject to a trust into the hands of third parties cannot have any application here."⁷¹

Retroactivity of recognition raised more difficult issues. Simon agreed that subsequent recognition of a new government can sometimes annul the sale of goods by a previous government. For example, goods held by the new government in territory under its control cannot be legally sold by the outgoing regime. Primarily, however, "retroactivity of recognition operates to validate acts of a *de facto* government which has subsequently become the new *de jure* government, and not to invalidate acts of the previous *de jure* government." The aircraft in question were the property of the legally recognized Nationalist government in December 1949. The aircraft were not located in territory controlled by the Communists.⁷² Therefore, they could be legally sold to a third party.⁷³

Legal authorities generally applauded the decision of the Privy Council. For example, *The Law Quarterly Review* commented:

The present case is undoubtedly of great practical importance because if the Privy Council had not allowed the appeal then all transactions with foreign governments would have been placed in legal jeopardy, for it would always be open to a successor government to argue that its predecessor had acted contrary to the interests of its people. There are sufficient instances of

70. *All England Law Reports*, 1952 (2 vols., London, 1952), II, 743.

71. *Ibid.* 743-4. Simon went on to note a possible exception to the general rule. He said: "At the same time, their Lordships must not be understood to reject the possibility of our courts refusing, in a conceivable case, to recognize the validity of the disposal of State property of a government on the eve of its fall, e.g., by a despot, who knows that previous recognition is just being withdrawn, where it is clear that his purpose was to abscond with the proceeds, or to make away with State assets for some private purpose."

72. The fact that the aircraft were in the physical possession of individuals acting in the name of the Communist government did not change the situation, as these individuals held possession of the property in defiance of a court injunction.

73. *All England Law Reports*, 1952, II, 745.

uncertainty in international affairs at the present time without adding to their number if this can be avoided.⁷⁴

Finally, there remained for Chennault and Willauer what proved to be the nasty matter of settling accounts with the Nationalists. The first indication of trouble had come in 1951 when CATI recovered the cash assets of CNAC and CATC, amounting to approximately \$1,800,000, which had been held by American banks. The government-controlled Central Bank of China had pressed for immediate repayment of the \$1,250,000 that had been advanced to CATI in 1949 for the purchase of Pan American Airways' share in CNAC. At the same time, the Bank of Taiwan demanded \$500,000 that had been lent to CNAC and CATC, while the Central Bank of Communications wanted the \$140,000 that had been lent to CATI to finance legal action for the recovery of the aircraft. CATI, under intense pressure, agreed to "loan" \$500,000 to the Bank of Taiwan for the specific purpose of currency stabilization. This left only \$400,000 to finance further legal action, as CATI had paid \$430,000 for the preservation of CNAC/CATC assets and \$520,000 for legal expenses. "There are some among their [Nationalist] bankers," Willauer wrote in August 1951, "who are so unpatriotic as to demand we pay over that money [\$400,000] at once, which leaves us the only alternative to turn the airplanes over to the Commies by abandoning the lawsuits for lack of funds."⁷⁵ Finally, Chiang Kai-shek had had to intervene on behalf of CATI.⁷⁶

Although CATI weathered this crisis, the controversy in 1951 was but a prelude to the storm that burst following the favourable decision in London. In a sense, CATI was the victim of its own propaganda. It had been necessary to exaggerate the value of the property, Chennault and Willauer explained to Chiang, "in order to build up the importance of these cases in political quarters, particularly in the United States." As a result, there was now gossip "that we are ourselves quietly reaping large financial benefits from this situation at the expense of the Chinese Government."⁷⁷ Another complicating factor was the confusion between CAT and CATI. Chennault and Willauer had deliberately obscured the corporate structure of their various enterprises and had withheld the true nature of the companies from authorities in Formosa lest the infor-

⁷⁴ *The Law Quarterly Review*, No. 69 (1953), pp. 3-5. See also *The Modern Law Review*, No. 16 (1953), pp. 226-30. Governor Grantham, for one, disagreed. The law, he wrote, "was on the side of the Chinese [Communist] government. . . ." The outcome of the matter gave the Peking regime "justification for displeasure and even resentment. . . ." *Via Ports*, pp. 162-4.

⁷⁵ Willauer to Louise Willauer, 29 August 1951, Willauer Papers.

⁷⁶ The problem of the cash assets of CATC and CNAC are discussed in a memorandum by J. K. Twanmoh, "CATI problems," 8 September 1951, Willauer Papers. An itemized record of expenditure was continued in a memorandum by Chennault and Willauer to Ho Chung-han, Minister of Communication, 28 August 1951, Willauer Papers.

⁷⁷ Chennault and Willauer memorandum, "A report on the CATC and CNAC legal cases," 9 November 1952, Willauer Papers.

mation reach Hong Kong and jeopardize the success of the law suits.⁷⁸ Many Nationalist officials understandably failed to appreciate the legal distinction between CAT and CATI, which meant, Willauer noted, "that every time we had some need of Chinese Government help for CAT, such as franchise renewal, the Chinese Government introduced the CNAC/CATC issue into the case."⁷⁹

Although considerable animosity was to remain on both sides, the problem was temporarily resolved by the establishment of a "Working Committee," composed of representatives of CATI and the Chinese Government, with full access to records of expenditures, prospects for sale of aircraft, and so forth.⁸⁰ CATI attempted to dispose of the aircraft during the next 18 months but without much success because the end of the Korean War had depressed the market for used aircraft. CATI reached a final agreement with the Nationalist government in December 1954. While there is no record of the terms of settlement, it seems unlikely that anyone made much money in the end except the lawyers.

Willauer, who had been serving as American ambassador to Honduras since late 1953, was disgusted with the conduct of the Nationalists. When Chennault informed him that the matter had finally been resolved, Willauer gave vent to his feelings in a lengthy reply. He wrote:

I know that you will realize I am just as relieved as you are that this damned CATI thing has finally gotten settled. I only hope the boys will be able to sell enough airplanes so that we can keep up with our commitments to the Chinese Government and perhaps have a dollar or two left over for all the sweat and tears we had to put into this quixotic gesture. Despite the hell we went through I know you agree with me that what we did very probably saved Formosa, if not from a takeover by parachuters, from a very nasty situation which would have prevailed in 1950 had the Communists been in possession of the CATI assets. I don't suppose you feel any better than I do that we never have been given full public credit by the Chinese Government on this score but rather have been maligned because of the troublesome financial aspects which the Chinese choose to misunderstand in their own favour. I am not bitter about it but sure am disillusioned, after all the years of trying to help those people culminating in this last great effort in which we succeeded beyond anybody's expectations.⁸¹

The activities of Chennault, Willauer, Corcoran and others throughout the controversy over recovery of the CNAC/CATC aircraft raise a number of questions, especially about American policy towards China

78. "To have revealed publicly in Formosa," wrote one CAT official, "that CATI was simply a cloaking nominee for C.A.T., S.A. would certainly have been communicated to Hong Kong, which would have seriously, perhaps fatally, endangered the security and success of the Hong Kong operation." "Background statement," 15 July 1953, Willauer Papers.

79. Willauer notes, n.d. [c. 1961], Willauer Papers.

80. "Minutes of the first meeting of the Working Committee; Present: Whiting Willauer, Claire L. Chennault, P. Y. Hsu, and R. C. Chen," 9 December 1952, Willauer Papers.

81. Willauer to Chennault, 15 December 1954, Willauer Papers.

Aircraft and Anti-Communists: CAT in Action, 1949-52

669

in the months prior to the outbreak of the Korean War. Documentation is incomplete but it seems clear that CATI received substantial assistance from the American Government from the beginning of the controversy in December 1949. While the public record indicates that the Truman administration generally followed a "hands off" policy towards the civil war in China between December 1949 and June 1950, there were obvious limits to non-involvement. Whether governmental support for CATI was exceptional within the general context of American policy, or whether such continued intervention in the Chinese civil war after late 1949 was commonplace, cannot be answered with confidence until governmental archives are opened and a more comprehensive study of this crucial period of Sino-American relations can be made. But such evidence as is available does suggest a certain distance between stated and actual policy.